

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 20, 2008

**STATE OF TENNESSEE v. IBRAHIM SEIKH AHMED**

**Direct Appeal from the Criminal Court for Davidson County  
No. 2007-C-2270 J. Randall Wyatt, Jr., Judge**

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**No. M2008-00555-CCA-R3-CD - Filed February 12, 2009**

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The appellant, Ibrahim Seikh Ahmed, pled guilty in the Davidson County Criminal Court to two counts of aggravated assault in exchange for a six-year sentence. On appeal, the appellant challenges the trial court's denial of alternative sentencing. Upon our review of the record and the parties' briefs, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

Jeffery A. DeVasher (on appeal) and Jonathan F. Wing (at trial), Nashville, Tennessee, for the appellant, Ibrahim Seikh Ahmed.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Senior Counsel; Victor S. Johnson, III, District Attorney General; and Benjamin J. Ford, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The Davidson County Grand Jury returned a multi-count indictment charging the appellant in count one with the attempted first degree murder of Jeremy Imbus, a Class A felony, and in count two with the aggravated assault of Andrew Nelson, a Class C felony.<sup>1</sup> After plea negotiations, the indictment was amended and the appellant pled guilty as a Range I standard offender to two counts of aggravated assault. The plea agreement provided that the appellant would receive a sentence of six years on each count, with the sentences to be served concurrently. The trial court was to determine the manner of service of the sentences.

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<sup>1</sup> In the indictment, the victim's surname is spelled "Inbus." However, at the sentencing hearing, the victim testified that the correct spelling of his surname is "Imbus."

At the plea hearing, the State recited the following factual basis for the pleas:

[O]n February 18<sup>th</sup> of 2007, at approximately 2:45 a.m., Officer John Pepper responded to a crash with injuries in a parking lot at 31st Avenue and Vanderbilt Place. Once Officer Pepper arrived, he observed a United Taxi Chevrolet Astro Van smashed against a tree and obviously abandoned. The victim, Jeremy Imbus, was lying on the ground in need of obvious medical attention. Imbus sustained a broken ankle, broken bones in his face, and hip fracture and abrasions. A Medcom unit transported Mr. Imbus to Vanderbilt Hospital.

Mr. Imbus' companion, Mr. Andrew Nelson, was at the scene and related the following: Mr. Imbus and Mr. Nelson were passengers in the cab that was located against the tree. They . . . were in town visiting a friend, had been going out and had . . . many, many drinks with their friends starting at approximately 3:00 or 4:00 in the afternoon until they were picked up by the cab around 2:00 in the morning. [After] they were picked up, . . . an argument began with the cab driver. There are multiple versions as to how that argument started. But the argument eventually led to an argument over religion. Mr. Nelson asked the cab driver to stop at an ATM machine so he could get money to pay for the cab ride. When he got back into the car, Mr. Imbus and the [appellant], who was driving the cab, had escalated their argument and were very obviously in a very heated exchange at that point in time. Mr. Nelson and Mr. Imbus, being visitors, were trying to find their friend's apartment. Mr. Nelson realized that he recognized an area that was not too far from there, realizing the situation, asked the cab driver, [the appellant], to drop them off at the parking lot at 31st Avenue North. As they were exiting the vehicle, the – the argument had escalated even more. Mr. Nelson exited the vehicle. Mr. Imbus, at that point, appeared to . . . kick at the [appellant]. . . . There are varying stories on whether those blows actually hit [the appellant] . . . or the back of [the appellant's] seat. At that point in time, Mr. Nelson grabbed Mr. Imbus and removed him from the cab. They began to walk away towards their friend's apartment. At that point, Mr. Nelson heard an acceleration of a vehicle, looked over his shoulder. The cab was accelerating. It jumped the curb, went up the hill, ran over a small tree and then ran over Mr. Imbus, causing the injuries that he sustained. At that point, the vehicle ran into a tree and came to a stop. And the cab driver, [the appellant], exited the vehicle and ran from the scene. He was later located in another cab a short ways away from the scene, brought

back to the scene and identified as the driver of that cab. [The appellant], at that point, was placed under arrest. He was . . . advised of his rights and related why he was being arrested. [The appellant] related a very similar story, as told by Mr. Nelson. However, he said that he thought he was about to be assaulted, that he was very angry and he attempted to call 911 first before he lost his temper and caused this accident.

At the sentencing hearing, Officer John Pepper with the Metropolitan Police Department testified that on February 18, 2007, he was dispatched to the scene of an accident with injuries. When he arrived at the scene, which was a parking lot, he saw a taxi van “that had been crashed into a tree.” Imbus was lying on the ground nearby, and Nelson was standing next to him. The appellant, who was the driver of the van, was not at the scene.

Officer Pepper testified that after speaking with Nelson and examining the scene, he concluded that the injury was not accidental and that the appellant had intentionally run over Imbus. Officer Pepper observed acceleration marks on the pavement and saw that a small tree in the path of the van had been knocked down. The evidence at the scene indicated that “[i]t wasn’t a situation where the vehicle just rolled straight ahead. The accelerator was pushed down, significant energy was transferred to that wheel, the steering wheel was turned and they were turned from the direction of the victim. . . .” Officer Pepper determined that the van struck a concrete curb before ultimately coming to a stop after crashing into a large oak tree. He said that, typically, the speed limit in a parking lot was ten or fifteen miles per hour (m.p.h.). He estimated that the appellant had been traveling at a speed of twenty or thirty m.p.h. when Imbus was struck.

When the appellant was located and arrested, he was cooperative and polite. He told Officer Pepper that he was very angry when the incident happened.

Andrew William Nelson testified that he was from Cincinnati, Ohio, and that he was in Nashville on February 17 and 18, 2007, to visit a friend from college. On Saturday, February 17, Nelson, his friend, and Imbus went to a Hooter’s restaurant where they ate and had several drinks. They went back to the friend’s apartment and drank some more. Later, they went to several bars in the Broadway area and continued drinking. Nelson explained that “it was steady drinking throughout the day.” He estimated that he consumed ten to twelve drinks.

When Nelson and Imbus decided to go home, they hailed a taxi which was driven by the appellant. While in the taxi, Imbus and the appellant began talking about religion. Nelson was not involved in the conversation. At first, the conversation was cordial and calm. Nelson said that neither he nor Imbus had any cash, so he asked the appellant to stop at an automatic teller machine. After Nelson got back into the taxi, the conversation became heated. Nelson and Imbus were unfamiliar with Nashville and had become lost. When Nelson recognized that the area they were in was only a short distance from their friend’s apartment, he decided that he and Imbus would walk the rest of the way. Nelson paid for the taxi ride.

Nelson got out of the taxi first. He saw Imbus kick the back of the appellant's seat. Nelson said that he did not see Imbus make contact with the appellant, but he supposed it was possible that he did. Nelson grabbed Imbus, pulled him from the taxi, and the two men began running up a grassy hill toward their friend's apartment.

Nelson said that he heard the taxi accelerate behind him and knew that something was wrong. The next thing he knew, Imbus was lying "almost lifeless" on the ground and the taxi had crashed into a tree. Nelson went to Imbus then called 911. Nelson said that he felt the emotional and mental impact of the incident for weeks after it happened.

Jeremy Imbus testified that he was twenty-four years old and was from Cincinnati, Ohio. He worked as a strength conditioning coach for a White Sox minor league baseball team. On February 17 and 18, 2008, he was in Nashville visiting friends. On the 17<sup>th</sup>, he and his friends began drinking around 5:00 p.m. at Hooters, then they drank at a friend's apartment. Around 10:00 p.m., they went to a "honky tonk" where they continued drinking. They decided to take a taxi to their friend's home because they had been drinking. Imbus said he could remember being in the taxi that night, but he could not recall what happened after he got out of the taxi. He said he remembered having a conversation with the appellant about religion. Specifically, he recalled the appellant making

anti-Semitic comments, comments about Hitler and what he did was good. It was a good thing. He was trying to rid the world of the Jews. And then Western society and America was brought into it and the greed and how that's, you know, responsible for a lot of the problems in the world.

Imbus stated that the appellant's comments shocked and upset him.

On cross-examination, Imbus stated that he did not remember insulting the appellant's religion and asserted that he had "never insulted anybody's religion, so I do not believe that would've happened, no." Imbus acknowledged that his memory of the cab ride was limited and that he had no memory of being struck by the cab. He said that when he woke up at the hospital, Officer Pepper told him he had been hit by the taxi. He stated that the anti-Semitic comments were the only thing he really remembered.

Imbus said that he was in the hospital for three days after being injured. He had multiple cuts and bruises, a broken bone in his face, a broken left hip, and a fracture in his lower right leg. His lower right leg had been dislocated from his ankle, and the bone had pierced the skin. While in the hospital in Tennessee, Imbus had two surgeries. After he was released from the hospital, he returned to Cincinnati. In May, he had surgery in Cincinnati.

Imbus testified that he was either in a wheelchair or on crutches for ten to twelve weeks after the incident and that he had extensive physical therapy. He recalled that his face was swollen for a long time after the incident. He said his ankle was still swollen and did not appear normal. He

continued to have pain, and he had been advised that he would probably develop arthritis in his ankle within ten to fifteen years. Imbus stated that the injuries had impacted his active lifestyle and that, because of his injuries, he would likely be unable to remain in his career. Imbus said that he would need additional surgeries because of the injuries he had sustained.

The appellant presented several character witnesses in his behalf. Abdi Libam, Abdirizak Hassan, Issa Mohamed, and Abdullahi Mohamed testified that they, like the appellant, were refugees from war-torn Somalia.<sup>2</sup> All four witnesses knew the appellant from the Al-Farooq Mosque where they worshipped. Libam explained that the Somali community in Nashville was very close-knit and that all of the members of the community were concerned about the appellant. Libam and Hassan stated that the appellant frequently volunteered at the Somali Community Center where he taught fellow refugees math and English. Libam, Issa Mohamed, and Abdullahi Mohamed stated that the appellant was a quiet person. Libam said that the appellant was also very religious. Libam acknowledged that he was aware of the appellant's prior conviction of felony evading arrest; however, Issa Mohamed said the appellant had described the incident as a "traffic violation." Hassan and Issa Mohamed testified that mental health treatment and anger management classes would be made available to the appellant.

The appellant testified that "the first thing I want to say is I want to apologize for what happened. I'm really very sorry and I feel the pain that Mr. Imbus has suffered. At the same time, I also suffered a similar pain. I have been in jail for one year and I had – I got a lot of trouble in the jail." The appellant said that he had driven a taxi for one year and had helped many people. The victims in this case were "the first people who assaulted me inside the taxi cab where I work."

The appellant explained that he had been listening to a tape of the Koran when Nelson and Imbus got into the taxi. They told the appellant they did not want to listen to the tape and "they said some words about it." The appellant informed them that he was listening to a holy book and that they should not insult it. After that, the two men "started insulting the Muslim faith and the Muslim people, [and] . . . they were also talking like some kind of crazy." The appellant said they were in a deserted parking lot, and the men would not get out of the taxi, so he called 911 for help. When he told the operator he needed police assistance, Imbus kicked the appellant several times in the head. The appellant said that when Nelson and Imbus left the taxi, he "overreacted" and his "anger had gotten the best of [him]." The appellant acknowledged that what he had done was wrong; however, he stated "what they did was also wrong."

The appellant stated that while he was in jail, he was involved in an altercation with another inmate and was placed on medication. He said he would accept treatment for anger management, maintaining that he would be "willing to work with . . . any person who's going to help me deal with my life."

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<sup>2</sup> Some of the witnesses in this case share a surname. Therefore, for clarity, we have chosen to utilize their first names. We mean no disrespect to these individuals.

The appellant said that he came to the United States on February 9, 2000, and that he had been living in Nashville since 2004. He admitted that he had been convicted of felony evading arrest in January 2007, following an incident where he led police on a high-speed chase, sometimes traveling as fast as 100 m.p.h. The chase ended because he collided with a civilian vehicle. The appellant said he spent two months in jail and acknowledged he had been on probation for only three weeks when the instant offense occurred.

The trial court acknowledged the testimony of the appellant's witnesses and the strong support of his community. However, the trial court expressed concern that the appellant was "still rationalizing how because of the dispute that they had and their conversation about religion and whatever, that he could see how he could be justified in doing . . . exactly what he did." The court stated that even if it assumed that Imbus may have provoked the situation, the appellant's actions were not justified.

Moreover, the court was concerned about the appellant reoffending only three weeks after being placed on probation for an offense in which he also endangered lives while driving his taxi. The trial court found that the appellant should serve his sentence in confinement to avoid depreciating the seriousness of the offense. The trial court further noted a need for deterrence. Finally, the court reiterated that measures less restrictive than confinement had been recently been unsuccessful. Therefore, the trial court denied the appellant's request for probation and ordered him to serve his sentence in confinement. On appeal, the appellant challenges the trial court's refusal to grant him an alternative sentence.

## **II. Analysis**

An appellant is eligible for alternative sentencing if the sentence actually imposed is ten years or less. See Tenn. Code Ann. § 40-35-303(a) (2006). The appellant's sentences meet this criteria. Moreover, an appellant who is an especially mitigated or standard offender convicted of a Class C, D, or E felony should be considered a favorable candidate for alternative sentencing absent evidence to the contrary. See Tenn. Code Ann. § 40-35-102(6). The following sentencing considerations, set forth in Tennessee Code Annotated section 40-35-103(1), may constitute "evidence to the contrary":

(A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;

(B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

State v. Zeolia, 928 S.W.2d 457, 461 (Tenn. Crim. App. 1996). Additionally, a court should

consider the defendant's potential or lack of potential for rehabilitation when determining if an alternative sentence would be appropriate. See Tenn. Code Ann. § 40-35-103(5).

In the instant case, the appellant is a standard Range I offender convicted of Class C felonies; therefore, he is considered to be a favorable candidate for alternative sentencing. However, the trial court determined that the appellant should not be granted alternative sentencing because to do so would depreciate the seriousness of the offenses and would have no deterrent effect. Moreover, the court found that measures less restrictive than confinement had been recently applied to the appellant.

The appellant argues that the trial court erred in denying an alternative sentence based upon a depreciation of the seriousness of the offenses and on deterrence. However, he concedes that he "has been the subject of failed rehabilitative measures . . . in that he was on probation at the time of the offenses in this case." Regardless, he argues that "he demonstrates favorable prospects of rehabilitation."

As the trial court noted, the appellant was on probation for an offense in which he endangered the lives of the citizenry by driving his taxi in a reckless manner. A scant three weeks after receiving probation for that offense, the appellant again endangered someone while driving his taxi. The court specifically stated that "clearly, he didn't learn anything from getting on probation on this other incident." The trial court was also concerned by the appellant's attempts to justify his conduct. We, like the trial court, believe that the appellant's rehabilitative potential is poor, as is evidenced by his reoffending shortly after being granted probation and by his efforts to diminish the seriousness of his actions. Therefore, we conclude that the trial court did not err in refusing to grant the appellant alternative sentencing.

### **III. Conclusion**

Based upon the foregoing, we affirm the judgments of the trial court.

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NORMA McGEE OGLE, JUDGE